Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1979

No. 79-768

JILL V. DeJOHN,
Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA (WESTERN DISTRICT)

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COMMONWEALTH OF PENNSYLVANIA,

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Petitioner respectfully prays that a Writ of Certiorari issue to review the final order of the Supreme Court of Pennsylvania entered herein on August 17, 1979, denying Petitioner's Petition for Reargument (Appendix, p. 1a).

Jurisdiction

The final order of the Supreme Court of Pennsylvania was made and entered on August 17, 1979 and received by Petitioner's counsel on August 20, 1979 (Appendix, p. 1a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

Question Presented

Did the Supreme Court of Pennsylvania violate the Petitioner's rights to due process of law and to the equal protection of the laws when it refused to suppress certain evidence in the instant case notwithstanding the fact that it found the same evidence to be objectionable and suppressible in a companion case and ordered the companion case retried.

Constitutional Provisions Involved

The Constitutional provisions involved are the Fifth and Fourteenth Amendments to the Constitution.

Amendment V provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV provides:

> SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Case

Petitioner was charged with criminal homicide, attempted theft by extortion and forgery in connection with a series of incidents which occurred in early February, 1976 in Allegheny County, Pennsylvania, involving the death of her husband and the attempted extortion of a neighbor. Initially, for the purpose of pre-trial motions, all three charges were combined since there were a number of common evidentiary issues and further, because the prosecution argued that all the crimes involved a common scheme and motive. Ultimately separate trials were held, with the Petitioner found guilty of murder in the third degree by a jury and, subsequently, being convicted of attempted theft by extortion before a judge alone. The same judge acquitted the Petitioner on the forgery charge. Since the procedural history of both cases is inextricably intertwined, a brief statement of the facts presented at Petitioner's homicide trial is essential to a full understanding of the instant Petition.

At approximately 1:00 o'clock A.M., February 12, 1976, the body of Michael DeJohn was found by his wife, Petitioner, Jill V. DeJohn, in the garage of their suburban Pittsburgh home. Investigation revealed that the victim had been shot once in the head by a .25 calibre weapon. His body was then dragged fifteen feet across the garage floor to the rear of his automobile. Petitioner reported that fifty to sixty dollars of "poker money" and an automatic type pistol, all kept in a basement recreation room, were missing.

At trial the Commonwealth attempted to show that the Petitioner had seriously mismanaged the family finances and, faced with the prospect that her husband was about to quit his job, and would discover her plight, killed him for the in-

surance proceeds ($200,000.00) his death would bring. The case was entirely circumstantial. Two witnesses placed Mr. DeJohn's car at or near the home at approximately 6:00 o'clock P.M. on February 11th. A cab driver testified that he picked up Petitioner and her two daughters at the home at 7:00 o'clock P.M. A pathologist placed the time of death at between 6:15 o'clock P.M. (when the victim, or more exactly, his car, was presumably last seen) and 1:04 o'clock A.M. when his body was discovered.

The Petitioner's allegedly desperate financial condition was depicted by Petitioner's neighbor, Joan Badzgon. Badzgon testified that on February 9, 1976, Petitioner came to her residence and related to Badzgon that Petitioner's husband was going to leave his job. After a short discussion, Petitioner started to leave when she noticed a white envelope on the front porch of the Badzgon home. The envelope contained a typewritten "very gross pornographic blackmail letter". The police were notified and although Petitioner and Mrs Badzgon followed the letter's instructions nothing further developed.

Petitioner later admitted in her own testimony that she had composed the extortion note, typing it on a typewriter purchased for that reason.

Although there were no witnesses to the crime, and although the murder weapon was never found, the petitioner was found guilty by the jury of third degree murder.

Virtually the same evidence was adduced at Petitioner's non-jury trial for attempted theft by extortion.

The critical evidence in both the homicide and extortion cases was developed from the seizure of Petitioner's bank records and the leads developed therefrom. These bank

records were seized pursuant to two alleged "subpoena duces tecum" which were prepared by the police and the District Attorney's Office and which the Commonwealth ultimately conceded were invalid *Commonwealth v. DeJohn*, ... Pa. ...., 403 A.2d 1283 at 1287 (1979) (Appendix, p. 9a).

Petitioner moved to suppress the bank records, and the leads derived therefrom, in pretrial suppression motions.[1] The motions were denied, the trial court ruling that Petitioner lacked standing to object to the seizure of the bank records under the doctrine of *United States v. Miller*, 425 U.S. 435 (1976).

This issue, among others, was preserved on appeal to the Pennsylvania Supreme Court which ruled that, *Miller, supra,* notwithstanding, the Petitioner had standing to challenge the validity of the seizures under rights granted her by the Constitution of Pennsylvania:

> We are convinced that under Article I, § 8, of the Pennsylvania Constitution bank customers have a legitimate expectation of privacy in records pertaining to their affairs kept at the bank. Since the records seized in the instant case were taken pursuant to an invalid subpoena, and appellant had a legitimate expectation of privacy in those records, appellant has standing to challenge their admissibility.

Commonwealth v. DeJohn, ... Pa. ...., *supra,* at 1291 (1979), (Appendix, p. 9a).[2]

---

[1] The suppression motions were filed and ruled upon prior to the severance of Petitioner's homicide and extortion cases. The same judge ruled on the motions as presided at both trials.

[2] Article I, § 8 of the Pennsylvania Constitution provides:

> The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or thing shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

The Supreme Court of Pennsylvania therefore reversed Petitioner's conviction for homicide. However, in the same opinion it upheld her conviction as the attempted theft by extortion charge:

> We believe, however, that the judgment of sentence for attempted theft by extortion must be affirmed. At the nonjury trial on the forgery and attempted extortion charges, appellant admitted purchasing the typewriter with the check seized pursuant to the invalid subpoena. Appellant further admitted to typing the extortion note, but attempted, unsuccessfully, to show that she withdrew from the plot.
>
> At the trial on the attempted extortion charges, however, the check used to purchase the typewriter was not introduced. The only reference to the check occurred in the following exchange:
>
> "Q. [Assistant District Attorney]: I direct your attention to what has been marked as Commonwealth's Exhibit 2 and ask you if you know what that is?
>
> "A. [Witness]: Yes. That is a Bill of Sale to Jill DeJohn on the Olympiette portable typewriter, Serial Numbers 2008610 and 9950, and supplies 1707.
>
> "The total bill was $123.57, which was paid by check no. 988, drawn on Mellon National Bank."
>
> Appellant failed to object to the mention of the check. Further, on this appeal, appellant has not argued that the typewriter and bill of sale were the fruits of a poisonous tree, i.e., obtained only because of the illegally seized check. Thus, as the illegally seized check was not introduced into evidence at the nonjury trial and no fruit of the poisonous tree agrument is advanced, we can find no reason to disturb the attempted theft by extortion conviction.

In her Application for Reargument, filed with the Pennsylvania Supreme Court, the Petitioner outlined the reasons why the Court was in error in upholding the attempted theft by extortion conviction. As related in that Application, Petitioner demonstrated that her original motions to suppress were jointly filed in both the homicide and attempted extortion cases (Appendix, p. 24a), and that the oral argument encompassed both cases as did the trial court's pre-trial denial of relief (Appendix, p. 26a). The issue was revived prior to the non-jury trial on the attempted theft by extortion charge (Appendix, p. 28a) and the Petitioner objected to the introduction of certain physical evidence obtained as a result of the illegally issued *subpoenae duces tecum* (Appendix, p. 29a). Petitioner demurred to the Commonwealth's case (Appendix, p. 29a), moved for a new trial and specifically objected to the physical evidence and testimony derived from the illegal seizures (Appendix, p. 31a). Petitioner raised and preserved these issues on appeal in the State Court (Appendix, p. 2a).

The Petitioner's Application for Reargument was denied on August 17, 1979 (Appendix, p. 1a) (Manderino, J. *dissenting* (see Appendix, p. 22a)), and this Petition followed.

Reasons Relied On for the Allowance of the Writ

The refusal of the Pennsylvania Supreme Court to suppress the evidence used to convict Petitioner of attempted theft by extortion, even though it ordered the Petitioner's companion homicide case reversed on the same grounds, was arbitrary and discriminatory.

As Mr. Justice Manderino indicated in his dissent to the denial of the Petition for Reargument, the Court's action was improper:

The petition of appellant, Jill DeJohn, for reargument should be granted to reconsider whether illegally obtained evidence was used in her trial for attempted extortion.

In the majority opinion, this Court held that although appellant had a legitimate expectation of privacy in her bank records and thus had standing to challenge their admissibility, appellant had waived her rights to challenge this same evidence and the fruits thereof as to her attempted evidence [sic] conviction. *Commonwealth v. DeJohn*, ... Pa. ...., 403 A.2d 1283 (J 277 of 1978, filed May 17, 1979). However, this issue was not waived.

While the bank check used to purchase the typewriter was not introduced at appellant's trial for attempted extortion, appellant did file a motion to suppress this evidence and the other evidence obtained from the information on the check—the fruits of the illegal subpoena. This motion was denied. Although at trial appellant did not object to the reference to the check used to purchase the typewriter, appellant continues to preserve the issue by objecting to the introduction of the typewriter and the bill of sale for the typewriter—the fruits obtained illegally. In this Court, appellant, as she had done at every stage of the proceeding, argued that the typewriter and bill of sale for the typewriter were "fruits of the poisonous tree"—the check—and were not admissible. Under these circumstances the issue of the use of the inadmissible evidence to obtain the conviction should be reconsidered. Appellant's petition for reargument as to this issue should be granted.

Commonwealth v. DeJohn, supra, 403 A.2d at 1307.

Although the underlying principle involved, *i.e.* that the Petitioner had standing to challenge the introduction of her illegally seized bank records, pursuant to rights conferred upon her by the Pennsylvania Constitution, is not a right sanctioned by the federal Constitution, *see United States v. Miller,* 425 U.S. 435 (1976), the arbitrary denial of her state created and state guaranteed right of privacy *is* a matter of federal concern.

As this Court recognized in *Griffin v. Illinois*, 351 U.S. 12, 18 (1955), once a state accords its citizens a right, as Pennsylvania did when it recognized a right of privacy in bank records, it must accord that right to all its citizens equally. If the state does not apply the state created right equally it runs afoul of the Fourteenth Amendment. *American Railway Express Co. v. Kentucky*, 273 U.S. 269, 273 (1927). *Cf. Goldberg v. Kelly*, 397 U.S. 254, 261-263 (1970). *See also United States ex rel. Bad Heart Bull v. Parkinson*, 381 F.Supp. 985, 986 (D.S.D. 1974); *United States ex rel. Collins v. Jozwiak*, 315 F.Supp. 188, 190 (E.D. Wis. 1970).

By on the one hand recognizing that the Petitioner had a protected interest in her illegally seized bank records and on the other hand denying her the right to challenge the admission of these records against her in the instant case on a waiver of rights theory—a theory which had no merit as Justice Manderino's dissent to the denial of argument, *supra,* makes clear—Pennsylvania acted in an arbitrary and capricious manner, thereby denying both the due process and the equal protection of the laws to the Petitioner.

Conclusion

For the reasons set forth above, it is respectfully submitted that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

STANLEY W. GREENFIELD,
GREENFIELD & MURTAGH,

Attorneys for Petitioner.

APPENDIX

A. Order of the Supreme Court of Pennsylvania Dated August 17, 1979 Denying Petition for Reargument.

THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

Sally Mrvos
Prothonotary
Irma T. Gardner
Deputy Prothonotary

801 City-County Building
Pittsburgh, Pa.
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August 17, 1979

Stanley W. Greenfield, Esq.
412 Carlton House
Pittsburgh, Pa. 15219

Robert L. Eberhardt, Esq.
Deputy District Attorney
401 Court House
Pittsburgh, Pa. 15219

Re: Commonwealth v. Jill DeJohn
Nos. 184 & 192 March Term, 1977

Dear Messrs. Greenfield and Eberhardt:

This is to advise you that the Court denied each of the Petitions for Reargument filed in the above-captioned matter on August 17, 1979.

Justice Manderino filed a Dissenting Statement, a copy of which is enclosed herewith.

Very truly yours,

SALLY MRVOS,
PROTHONOTARY.

SM:ad
Enclosure

AUG 20 1979

B. Opinion of the Supreme Court of Pennsylvania Dated May 17, 1979, Commonwealth v. DeJohn.

COMMONWEALTH OF PENNSYLVANIA,

v.

JILL V. DeJOHN, Appellant.

Supreme Court of Pennsylvania
Argued Sept. 19, 1978
Decided May 17, 1979
Rehearing Denied Aug. 17, 1979

O'BRIEN, *Justice*

Appellant, Jill V. DeJohn, was convicted by a jury of murder of the third degree. In a subsequent nonjury trial, she was also convicted of attempted theft by extortion. Post-verdict motions were denied and appellant was sentenced to concurrent prison terms of ten-to-twenty-years for the murder conviction and one-to-three-years for the attempted theft by extortion conviction. This direct appeal followed.[1]

I.

Appellant first claims that the evidence is insufficient to sustain her conviction for murder of the third degree. The facts are as follows.

At approximately 1 a.m., on February 12, 1976, appellant discovered the body of her husband, Michael DeJohn, in the garage of their suburban Pittsburgh home. Death was caused

[1] The judgment of sentence in the attempted theft by extortion case was appealed to the Superior Court, which certified that appeal to this court.

by a single gunshot wound to the back of the head, fired from a distance of no greater than eighteen inches. The victim had been shot by a .25 caliber pistol. A pathologist was unable to set an exact time of death, but estimated that death occurred between 6:15 p. m. and 1:04 a. m. on the evening of February 11 and the early morning hours of February 12, 1976. The pathologist did opine that death appeared to be closer to 6:15 p. m. rather than the later time. The victim had been shot near the door between the garage and the downstairs gameroom and then was dragged about fifteen feet in a series of movements to a spot between the rear of his car and the garage door. A recent bloodstain consistent with the trail of the victim's blood was found on the lip of the trunk of the victim's car, indicating that someone had tried to place the body in the trunk of the car. A sliding glass door to the outside, off the downstairs gameroom, was open approximately eight to eighteen inches with no signs of forcible entry. No footprints were found on the ground outside the open door. According to appellant, the only items missing from the home were $40 or $50 in poker money and a .25 caliber automatic pistol. The victim's ring, watch and wallet, containing $46, were found untouched on his person.

Mr. DeJohn had left his home at 7:00 a. m. on February 11 for a business trip to Washington, D. C. Appellant had a luncheon date with John Lindemulder, a Pittsburgh area radio personality, at the Sewickley Holiday Inn. Appellant's two children, Dawn, age twelve, and "Cricket," age nine, had been waiting outside the locked home approximately fifteen minutes when appellant arrived home from her lunch date at 4:00 p. m. Appellant told her daughters that Lindemulder was a man from the parking garage who drove her home because

her car had broken down. Appellant later admitted that she left her car at Allegheny Center, in the northside of Pittsburgh, where she had met Lindemulder, and returned home without her car because she knew the girls would be locked out of the house.

Appellant testified that the victim called her at their home after 5:00 p. m. from Greater Pittsburgh Airport. She also testified that the victim told her that he had a business meeting, after which he would return home so that the family could go to dinner to celebrate appellant's birthday. According to appellant, her husband told her that should he be late, he would meet her and the girls at the HuKeLau Restaurant. Gilmore Wheeler, the other party to the business meeting, testified that he was unaware of the late night meeting. According to appellant, when her husband had not returned by 7:00 p. m., she called a cab and left for the restaurant with her daughters. The trio returned home at 9:40 p. m. Appellant stated that Mr. DeJohn's absence did not worry her, as he had been late in the past because of business meetings. Before going to bed, appellant went to the garage to turn on the spotlight in the driveway, when she discovered her husband's body.

Appellant's neighbor and the paperboy both testified that they saw the victim's car pull into the DeJohn driveway shortly after 6:00 p. m. on February 11. The time was verified because the neighbor was involved in a toll call on the telephone when he noticed Mr. DeJohn's automobile pull into the driveway. Telephone company records indicated that the neighbor's telephone was in use between 6:07 p. m. and 6:11 p. m. Further, a parking ticket was found on the victim's body which indicated he had left the airport parking lot at 5:23

p. m. An Allegheny County Detective later made the same drive from the airport to the DeJohn residence, leaving at 5:23 p. m., and arriving at 6:05 p. m.

Appellant was in charge of managing the family finances, as the husband had no interest in monetary matters. As it turned out, appellant was doing a poor job, having missed the last two house mortgage payments, with other indebtedness of $9,000 to $10,000. To obtain money, appellant had signed her husband's name on a loan application at a local bank, to obtain money to pay back $3,000 she owed to an employee of their home builder. The employee testified that he threatened to go to Mr. DeJohn before appellant repaid the loan. Further, appellant admitted attempting to extort $5,000 from a neighbor. Moreover, Mr. DeJohn had submitted a letter of resignation from his job and appellant knew of this.[2] It was stipulated that Mr. DeJohn was insured for $201,000, with appellant being the primary beneficiary.

Appellant and her two children testified that appellant did not go downstairs after 6:00 p. m. The children were watching television in the first floor family room between 4:30 p. m. and 6:30 p. m. Appellant testified that the garage door, when being opened, could be heard throughout the house. Dawn DeJohn testified that she did not hear her father enter the house. The children, however, did not hear the paperboy both knocking on the door and ringing the doorbell,[3] despite

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[2] Mr. DeJohn subsequently withdrew his resignation letter. Appellant testified that the day of the homicide, her husband told her of his decision. (Notes of Testimony. Page 940).

[3] Officers subsequently fired a .25 caliber weapon in the DeJohn garage while other officers remained in the family room. The officer in the house likened the sound of the gun to a 2" x 4" piece of lumber falling onto the concrete floor.

the fact that the chimes were located immediately outside the family room.

Testimony showed that Mr. DeJohn was an officer in the "Green Berets," an elite Army unit, and had been decorated for bravery in Viet Nam. Patty Marie DeJohn Boyle testified that, in her opinion, because of his background, someone would have had to be familiar with Mr. DeJohn in order to get within pointblank range before shooting him in his own garage. Further, a neighbor testified that appellant had told her she had access to a gun and knew how to use it.[4]

As we recently stated in *Commonwealth v. Long*, 470 Pa. 204, 206, 368 A.2d 265, 266 (1977):

> ". . . Since all of the evidence produced by the prosecution to support its theory was circumstantial and the issue before us is the sufficiency of that circumstantial evidence, we note initially what we have said about circumstantial evidence in the past. In *Commonwealth v. Simpson*, 436 Pa. 459, 260 A.2d 751 (1970) we said:
>
> " 'It is true that circumstantial evidence, in itself, may be sufficient to establish the commission of a crime and the accused's connection therewith. . . . It is equally true that in evaluating the sufficiency of the evidence after a guilty verdict, all of the evidence, be it direct or circumstantial, must be read in a light most favorable to the Commonwealth, and the Commonwealth must be given the benefit of all reasonable inferences arising therefrom. . . . But before a conviction will be sustained, "the facts and circumstances proved must be of such a character as to establish guilt beyond a reasonable doubt." . . . And, where a conviction is based entirely on circumstantial evidence, "the theme of guilt must flow from the facts and circumstances proved, and be consistent with them all." . . . If the conviction is based wholly on inferences, suspicion and conjecture, it cannot stand. . . .' " (Citations omitted.)

[4] Additionally, appellant also bragged that she could plan and commit the "perfect crime."

We believe that the entirely circumstantial case against appellant was sufficient to establish her guilt beyond a reasonable doubt.

Testimony of two individuals indicated that the victim's car was seen pulling into his driveway shortly after 6:00 p. m. the day of the killing. After having been away all day and intending to go out to dinner to celebrate a birthday, the jury could find it incredulous that Mr. DeJohn would remain in the garage almost an hour while his wife and two children left for dinner. Further, witnesses testified that because of DeJohn's background in the military, a stranger would not have been able to shoot DeJohn from pointblank range in the back of the head.

While the defense argued that DeJohn possibly confronted a burglar or a robber, the jury may have rejected this theory as implausible for three reasons. First, there was no sign of forced entry anywhere in the house. Second, it is unlikely a burglar or robber would delay his flight after killing DeJohn to drag his body across the garage floor. Third, the victim's watch, ring and wallet, containing $46, were untouched.

Thus, the evidence, read in a light most favorable to the Commonwealth, and the logical inferences therefrom indicate that the victim arrived home shortly after 6:00 p. m. The pathologist testified that DeJohn died between 6:00 p. m. and 1:00 a. m., but in his opinion closer to 6:00 p. m. Appellant had a motive, as she had mismanaged the financial affairs of the family. In an attempt to raise some money, appellant had attempted to extort money from a neighbor and had signed her husband's signature on a bank loan application. Appellant also knew her husband was thinking of quitting his job. As the victim's life was insured in appellant's favor for $201,000, appellant certainly had a motive to kill her husband.

Mr. DeJohn was shot by a .25 caliber weapon. The DeJohns' owned a .25 caliber weapon which was accessible to appellant, although she testified that it was taken in the "robbery." Thus, when read in the light most favorable to the Commonwealth, the evidence and logical inferences show that appellant had the opportunity, means and motive to kill her husband. We thus believe the jury's verdict is supported by the circumstantial evidence beyond a reasonable doubt.

II.

Appellant argues that the court below erred in refusing her motion to suppress certain evidence obtained pursuant to two *subpoenae duces tecum*. The facts are as follows.

Following the homicide, both Ross Township and Allegheny County Police began investigations. Eventually, appellant became a prime suspect. On February 25, 1976, officials of the McKnight Road Office of Mellon Bank were served with a

"court subpoena," which demanded "copies of all information pertaining to accounts, or application for account, made by Jill and/or Michael DeJohn of 492 Woodland Road, Pittsburgh, Pennsylvania 15237 (Ross Township)". The document further provided that "copies of records . . . be turned over to County Detectives." On February 27, 1976, a second "subpoena" was issued on the same parties, demanding "all original records pertaining to personal cash reserve account application, and original new account card for Michael and Jill DeJohn. . . ." The subpoena ordered "These records . . . be turned over to Lt. Guthrie, Ross Township Police Department." Each "subpoena" bore the signature of Wayne Kelly, Clerk of Courts, and contained an admonition that "Failure to [comply with the subpoena] may subject you to fine and/or imprisonment." Pursuant to these two documents, police obtained the cancelled check used to purchase the typewriter on which the extortion note had been typed and other evidence which indicated that appellant had signed her husband's signature on a loan application.

At the time both "subpoenae" were issued, there were no ongoing legal proceedings of any nature instituted against appellant. No judge of the Court of Common Pleas or District Justice reviewed or issued the "subpoenae". The District Attorney's "subpoenae" were obtained without any court process. However, one officer testified that this procedure was used "because we've done that in the past and have done it successfully. Secondly, because we were advised to do so by [the Assistant District Attorney in charge of the case]."

Appellant argues that since the subpoenae were unlawful and used to procure evidence, the evidence seized should

have been suppressed. As the court below failed to suppress the evidence, appellant argues that she is entitled to a new trial.

The Commonwealth does not argue that the subpoenae were lawful,[5] but rather that appellant lacks the standing to challenge the seizure of the bank records. The Commonwealth relies on *United States v. Miller*, 425 U.S. 435, 96 S.Ct. 1619, 48 L.Ed.2d 71 (1976) and urges this court to apply the *Miller* holding on a case of first impression in this court, *i.e.* whether a depositor has standing to challenge the seizure of bank records pertaining to that depositor.

In *Miller*, the United States Supreme Court held that the Fourth Amendment to the United States Constitution did not protect a depositor in such a situation. As the Court stated:

> "Respondent urges that he has a Fourth Amendment interest in the records kept by the banks because they are merely copies of personal records that were made available to the banks for a limited purpose and in which he has a reasonable expectation of privacy. He relies on this Court's statement in *Katz v. United States*, 389 U.S. 347, 353, 88 S.Ct. 507, 512, 19 L.Ed.2d 576, 583 (1967), quoting *Warden v. Hayden*, 387 U.S. 294, 304, 87 S.Ct. 1642, 1648, 18 L.Ed.2d 782, 790 (1967), that 'we have . . . departed from the narrow view' that ' "property interests control the right of the Government to search and

[5] In *Commonwealth v. Polak*, 438 Pa. 67, 263 A.2d 354 (1970), this court quashed the subpoena therein because when it was issued, there was no existing matter or cause pending before the court. *Polak* would thus preclude the Commonwealth from claiming that the instant subpoena was lawful.

> seize," ' and that a 'search and seizure' become u easonable when the Government's activities violate 'the privacy upon which [a person] justifiably relie[s].' But in *Katz* the Court also stressed that '[w]hat a person knowingly exposes to the public . . . is not a subject of Fourth Amendment protection.' 389 U.S., at 351, 88 S.Ct. 507, at 511, 19 L.Ed.2d at 582. We must examine the nature of the particular documents sought to be protected in order to determine whether there is a legitimate 'expectation of privacy' concerning their contents. Cf. *Couch v. United States*, 409 U.S. 322, 335, 93 S.Ct. 611, 619, 34 L.Ed.2d 548, 558 (1973).
>
> "Even if we direct our attention to the original checks and deposit slips, rather than to the microfilm copies actually viewed and obtained by means of the subpoena, we perceive no legitimate 'expectation of privacy' in their contents. The checks are not confidential communications but negotiable instruments to be used in commercial transactions. All of the documents obtained, including financial statements and deposit slips, contain only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business. The lack of any legitimate expectation of privacy concerning the information kept in bank records was assumed by Congress in enacting the Bank Secrecy Act, the expressed purpose of which is to require records to be maintained because they 'have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings,' 12 U.S.C. § 1829b(a)(1). Cf. *Couch v. United States*, supra, at 335 [93 S.Ct. at 619, 34 L.Ed.2d 558].

Appendix B.

"The depositor takes the risk, in revealing his affairs to another, that the information will be conveyed by that person to the Government. *United States v. White*, 401 U.S. 745, 751-752 [91 S.Ct. 1122, 1125-1126, 28 L.Ed.2d 453, 458-459] (1971). This Court has held repeatedly that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed. Id., at 752, 91 S.Ct. 1122, at 1126, 28 L.Ed.2d, at 459; *Hoffa v. United States*, 385 U.S. [293], at 302, 87 S.Ct. 408, at 413, 17 L.Ed.2d 374, at 382; *Lopez v. United States*, 373 U.S. 427, 83 S.Ct. 1381, 10 L.Ed.2d 462 (1963).

"This analysis is not changed by the mandate of the Bank Secrecy Act that records of depositors' transactions be maintained by banks. In *California Bankers Assn. v. Shultz*, 416 U.S. [21] at 52-53, 94 S.Ct. 1494, at 1512, 39 L.Ed.2d 812, at 835-836, we rejected the contention that banks, when keeping records of their depositors' transactions pursuant to the Act, are acting solely as agents of the Government. But, even if the banks could be said to have been acting solely as Government agents in transcribing the necessary information and complying without protest with the requirements of the subpoenas, there would be no intrusion upon the depositors' Fourth Amendment rights. See *Osborn v. United States*, 385 U.S. 323, 87 S.Ct. 429, 17 L.Ed.2d 394 (1966); *Lewis v. United States*, 385 U.S. 206, 87 S.Ct. 424, 17 L.Ed.2d 312 (1966)." *Id.*, at 442-43, 96 S.Ct., at 1623-1624 (Footnotes omitted)[6].

Appendix B.

Appellant, however, bases her claim on Article I, § 8 of the Pennsylvania Constitution, which states:

> "The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant."

Further, in a footnote to *Commonwealth v. Harris*, 429 Pa. 215, 219 n. 2, 239 A.2d 290, 292 n. 2 (1968), we stated:

> "However, the state has the power to impose standards on searches and seizures higher than those required by the Federal Constitution. See *Cooper v. California*, 386 U.S. 58, 87 S.Ct. 788, 17 L.Ed.2d 730 (1967)."

Since appellant bases her claim on state constitutional grounds, we find the following commentator's observations to be pertinent:

> "State judges, however, need not ignore the reasoning of the United States Supreme Court in opinions rejecting

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[6] In November, 1978, the United States Congress passed the Financial Institutions Regulatory and Interest Rate Control Act of 1978. Act of November 10, 1978, P.L. 95-630 (effective 120 days after enactment date). In Title XI—the Right to Financial Privacy, Congress limited those procedures whereby federal authorities could obtain a customer's bank records, § 1102. Further, a customer is given the opportunity to challenge the legitimacy of any seizure, § 1110.

a comparable federal constitutional claim. For a state court interpreting a state constitution, opinions of the United States Supreme Court are like opinions of sister state courts or lower federal courts. While neither binding in a constitutional sense nor precedential in a jurisprudential one, they are entitled to whatever weight their reasoning and intellectual persuasiveness warrant. One would expect a state court to deal carefully with a Supreme Court opinion and to explain forthrightly why it found itself constrained to reason differently. But such a difference in reasoning should be no more alarming than the differences which impel one judge to dissent from another's opinion, one court to disagree with another, or the judges of any court to disagree with a precedent established by their predecessors." Falk, The State Constitution: A More Than "Adequate" Nonfederal Ground, 61 Calif.L.Rev. 273, 283-84 (1973).[7]

As we believe that *Miller* establishes a dangerous precedent, with great potential for abuse, we decline to follow that case when construing the state constitutional protection against unreasonable searches and seizures.

The protection provided by Article I, § 8, of the Pennsylvania Constitution extend to those zones where one has a reasonable expectation of privacy. As we stated in *Commonwealth v. White,* 459 Pa. 84, 89-90, 327 A.2d 40, 42 (1974):

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[7] See Wilkes, The New Federalism in Criminal Procedure: State Court Evasion of the Burger Court, 62 Ky.L.J. 421 (1974); Wilkes, More of the New Federalism in Criminal Procedure, 63 Ky.L.J. 873 (1975).

". . . An individual's *effects* and *possessions* are constitutionally protected from unreasonable search and seizure as well as his person. U.S.Const. Amend. IV, Pa.Const. art. I, § 8. This protection does not depend on the physical presence or physical absence of the individual owner. 'So long as a person seeks to preserve his effects as private, even if they are accessible to . . . others, they are constitutionally protected. Stated differently, a person must maintain the privacy of his possessions in such a fashion that his "expectations of freedom from intrusion are recognized as reasonable." ' *Commonwealth v. Platou,* 455 Pa. 258, 266-267, 312 A.2d 29, 34 (1973), cert. denied, 417 U.S. 976, 94 S.Ct. 3183, 41 L.Ed.2d 1146 (1974)." (Emphasis in original.)

In *U. S. v. Miller, supra,* the court held that a depositor had no reasonable expectation of privacy in records which the majority deemed to be records of the bank. The California Supreme Court, when deciding an identical issue under the California Constitution in *Burrows v. Superior Court of San Bernardino County,* 13 Cal.3d 238, 118 Cal.Rptr. 166, 529 P.2d 590 (1974),[8] took a different view. As that court stated:

> "It cannot be gainsaid that the customer of a bank expects that the documents, such as checks, which he transmits to the bank in the course of his business operations, will remain private, and that such an expectation is reasonable." *Id.,* at 243, 118 Cal.Rptr., at 169, 529 P.2d, at 593.

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[8] In *Burrows,* the bank therein turned over records upon an informal request of police. Whether the records are obtained pursuant to either an informal request and an invalid subpoena makes no difference on the analysis of the privacy issue.

As the court went on to explain:

> ". . . For all practical purposes, the disclosure by individuals or business firms of their financial affairs to a bank is not entirely volitional, since it is impossible to participate in the economic life of contemporary society without maintaining a bank account. In the course of such dealings, a depositor reveals many aspects of his personal affairs, opinions, habits and associations. Indeed, the totality of bank records provides a virtual current biography. While we are concerned in the present case only with bank statements, the logical extension of the contention that the bank's ownership of records permits free access to them by any police officer extends far beyond such statements to checks, savings, bonds, loan applications, loan guarantees, and all papers which the customer has supplied to the bank to facilitate the conduct of his financial affairs upon the reasonable assumption that the information would remain confidential. To permit a police officer access to these records merely upon his request, without any judicial control as to relevancy or other traditional requirements of legal process, and to allow the evidence to be used in any subsequent criminal prosecution against a defendant, opens the door to a vast and unlimited range of very real abuses of police power.
>
> "Cases are legion that condemn violent searches and invasions of an individual's right to the privacy of his dwelling. The imposition upon privacy, although perhaps not so dramatic, may be equally devastating when other methods are employed. Development of photocopying machines, electronic computers and other sophisticated

> instruments have accelerated the ability of government to intrude into areas which a person normally chooses to exclude from prying eyes and inquisitive minds. Consequently judicial interpretations of the reach of the constitutional protection of individual privacy must keep pace with the perils created by these new devices." *Id.*, at 247, 118 Cal.Rptr., at 172, 529 P.2d, at 596.

Further, the court stated:

> ". . . It is significant in this connection that the bank provided the statements to the police in response to an informal oral request for information about all of petitioner's accounts. Thus, the character, scope, and relevancy of the material obtained were determined entirely by the exercise of the unbridled discretion of the police. If this search may be deemed reasonable, nothing could prevent any law enforcement officer from informally requesting and obtaining all of a person's or business entity's records which had been confided to a bank, though such records might have no relevance to a crime, if any, under investigation; and those records could be introduced into evidence in any subsequent criminal prosecution." *Id.*, at 243, 118 Cal.Rptr., at 169, 529 P.2d, at 493.

We believe the analysis of the California Supreme Court, in recognizing modern electronic realities, is more persuasive than the simplistic proprietary analysis, supposedly rejected in *Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967), used by the court in *Miller*. See *U. S. v. Miller, supra*, 425 U.S., at 447, 96 S.Ct. 1619 (Brennan, J., dissenting.) See also *Rakas v. Illinois*, ... U.S. ...., 99 S.Ct. 421, 58 L.Ed.2d 387 (1978).

The Commonwealth, on the other hand, urges us to reject *Burrows* for three reasons, none of which we believe to be persuasive. The Commonwealth first argues that adopting *Burrows* would adversely affect the negotiability of checks. As the Commonwealth states in its brief:

> ". . . If a customer issues a check to a merchant, the expectation of privacy of the issuer may effectively curtail the merchant from negotiating the check to his supplier and so forth, the result of which would undermine the entire system which depends on free negotiability of instruments. It is difficult to perceive how an issuer of check, with no control over whom the check may be negotiated to, could claim any privacy interest."

We believe that the drawer of a check, to a limited extent, gives up his right to privacy in that check while that check is circulated in commercial channels.

As one commentator, however, has stated:

> ". . . the bank customer does not waive his privacy right by public exposure of the microfilm composite, *although he may have done so in regard to the limited information contained on a single negotiable instrument placed in public commerce.*[80] Exposing the parts to sundry unrelated people is not equivalent to exposing the whole to one's bank for limited business purposes.[81]

"[80] The payee or endorsee of any one check is likely to be a stranger to the drawer, who neither comprehends nor cares about this check's significance as part of a pattern of activity.

"[81] Although a bank employee may see a customer's checks in bundles, the employee and customer are often unaware of the other's private life. In addition, brief business exposure is probably insufficient to permit the careful examination necessary to construct accurate conclusions about the customer's lifestyle." 14 San Diego L.Rev. 414, 425 (1977). (Emphasis added.)

Further, as the Court stated in *Burrows, supra,* 13 Cal.3d, at 244, 118 Cal. Rptr., at 170, 529 P.2d, at 592:

> ". . . The disclosure by the depositor to the bank is made for the limited purpose of facilitating the conduct of his financial affairs; it seems evident that his expectation of privacy is not diminished by the bank's retention of a record of such disclosures."

Thus, using what we believe to be a realistic approach to modern economic realities, we do not believe our decision will in any way affect the negotiability of checks.

The Commonwealth next argues that adopting *Burrows* would amount to this court's creation of banker-customer privileges, a task which should be left to the Legislature. We do not believe, however, that our decision in any way creates such a privilege, as the holder of any of the traditionally recognized privileges cannot be compelled to waive said privilege. A bank could always be compelled to turn over customer's records when served with a valid search warrant or some other type of valid legal process, such as a lawful subpoena.

The Commonwealth finally argues that *Burrows* is inapplicable because the California Constitution contains the following provision:

> "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring possessing and protecting property, and pursuing and obtaining safety, happiness and *privacy.*" West's Ann.Cal.Const. Art. 1, § 1 (Emphasis added.)

The Commonwealth believes that since the Pennsylvania Constitution contains no explicit provision pertaining to the right to privacy, *Burrows* should not be followed. We do not agree.

In *Commonwealth v. Platou*, 455 Pa. 258, 312 A.2d 29 (1973), cert. denied, 417 U.S. 976, 94 S.Ct. 3183, 41 L.Ed.2d 1146 (1974), which judgment rests on an adequate state ground, we held that the right to be free from unreasonable searches and seizures contained in Art. I, § 8, of the Pennsylvania Constitution is tied into the implicit right to privacy in this Commonwealth. See *Griswold v. Connecticut*, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965) and *In re B*, ... Pa. ....., 394 A.2d 419, 425 (1978).

We thus are not persuaded by the agreements advanced by the Commonwealth that we should reject the analysis of the California Supreme Court in *Burrows*. We are convinced that under Art. I, § 8, of the Pennsylvania Constitution bank customers have a legitimate expectation of privacy in records pertaining to their affairs kept at the bank. Since the records seized in the instant case were taken pursuant to an invalid subpoena, and appellant had a legitimate expectation of privacy in those records, appellant has standing to challenge their admissibility.

The Commonwealth argues that the admission of the evidence in question was harmless error as to the murder conviction, as the evidence went only to the attempted extortion and forgery charges. This argument ignores the fact that the evidence was introduced at appellant's murder trial to show motive. As such, the judgment of sentence for murder of the third degree must be reversed.

We believe, however, that the judgment of sentence for attempted theft by extortion must be affirmed. At the nonjury trial on the forgery and attempted extortion charges, appellant admitted purchasing the typewriter with the check seized pursuant to the invalid subpoena. Appellant further admitted to typing the extortion note, but attempted, unsuccessfully, to show that she withdrew from the plot.

At the trial on the attempted extortion charges, however, the check used to purchase the typewriter was not introduced. The only reference to the check occurred in the following exchange:

> "Q. [Assistant District Attorney]: I direct your attention to what has been marked as Commonwealth's Exhibit 2 and ask you if you know what that is?
>
> "A. [Witness]: Yes. That is a Bill of Sale to Jill DeJohn on the Olympiette portable typewriter, Serial Numbers 2008610 and 9950, and supplies 1707.
>
> "The total bill was $123.57, which was paid by check no. 988, drawn on Mellon National Bank."

Appellant failed to object to the mention of the check. Further, on this appeal, appellant has not argued that the typewriter and bill of sale were the fruits of a poisonous tree, *i. e.*, obtained only because of the illegally seized check. Thus, as the illegally seized check was not introduced into evidence at the nonjury trial and no fruit of the poisonous tree argument is advanced, we can find no reason to disturb the attempted theft by extortion conviction.

Judgment of sentence at No. 184 March Term, 1977 is reversed and the case is remanded for a new trial. Judgment of sentence at No. 192 March Term, 1977 is affirmed.[9]

ROBERTS, J., files a concurring opinion.

LARSEN, J., files a concurring and dissenting opinion.

MANDERINO, J., files a dissenting opinion.

POMEROY, former J., took no part in the decision of this case.

PETITION FOR REARGUMENT

MANDERINO, Justice, dissenting.

The petition of appellant, Jill DeJohn, for reargument should be granted to reconsider whether illegally obtained evidence was used in her trial for attempted extortion.

In the majority opinion, this Court held that although appellant had a legitimate expectation of privacy in her bank records and thus had standing to challenge their admissibility, appellant had waived her rights to challenge this same evidence and the fruits thereof as to her attempted evidence conviction. *Commonwealth v. DeJohn*, ... Pa. ...., 403 A.2d 1283 (J 277 of 1978, filed May 17, 1979). However, this issue was not waived.

While the bank check used to purchase the typewriter was not introduced at appellant's trial for attempted extortion,

[9] Given our resolution of the above issues, we need not decide appellant's other allegations of error.

appellant did file a motion to suppress this evidence and the other evidence obtained from the information on the check—the fruits of the illegal subpoena. This motion was denied. Although at trial appellant did not object to the reference to the check used to purchase the typewriter, appellant continues to preserve the issue by objecting to the introduction of the typewriter and the bill of sale for the typewriter—the fruits obtained illegally. In this Court, appellant, as she had done at every stage of the proceeding, argued that the typewriter and bill of sale for the typewriter were "fruits of the poisonous tree"—the check—and were not admissible. Under these circumstances the issue of the use of the inadmissible evidence to obtain the conviction should be reconsidered. Appellant's petition for reargument as to this issue would be granted.

C. Application to Suppress Evidence and for Return of Property.

IN THE COURT OF COMMON PLEAS
Of Allegheny County, Pennsylvania
Criminal Division

COMMONWEALTH OF PENNSYLVANIA,
v.
JILL V. DeJOHN.

No. CC760-2893
(Murd/Vol Mansl.)
No. CC760-3072
(Att Theft By Extortion)
No. CC760-3020
(Forgery)

Trial Date: September 13, 1976

AND NOW comes the Defendant, Jill V. DeJohn, by her attorneys, Stanley W. Greenfield, Esquire, and Greenfield & Minsky, and moves the Court for an Order suppressing evidence seized in the instant matters, leads derived therefrom, and for the return of said property, and further to provide for a sequestered hearing on said application, in support of which she asserts:

1. Defendant, Jill V. DeJohn, is charged with the above crimes in three separate indictments.

2. Pursuant to subpoena, the Commonwealth has seized certain of Defendant's banking records from the Mellon National Bank which Defendant has reason to believe the Commonwealth expects to attempt to introduce at said trial or trials of the above indictments.

3. Defendant further has reason to believe that the Commonwealth expects to introduce other evidence derived from leads obtained in the seizure of the records described in Paragraph 2.

4. Said seizures were illegal in that:

(a) The subpoena authorizing their seizure was issued and executed in violation of the law of Pennsylvania.

(b) Said seizures were made without any probable cause with or without any warrant;

(c) Said seizures were not incident to any ongoing proceeding;

(d) Said seizures were made without any valid consent; and

(e) Said seizures were otherwise in violation of the Constitution of the United States of America and the Commonwealth of Pennsylvania.

4. The charges against Defendant have received considerable public notoriety and media coverage, giving Defendant reasonable cause to believe that hearings on any pretrial motions or applications will result in further media coverage, virtually on the eve of Defendant's trial, now scheduled for September 13, 1976, all of which would be to her irremediable prejudice.

WHEREFORE, this Application.

Respectfully submitted,
GREENFIELD & MINSKY,
STANLEY W. GREENFIELD,
Attorneys for Defendant.

D. Statement of Findings of Facts and Conclusions of Law.

IN THE COURT OF COMMON PLEAS
of Allegheny County, Pennsylvania
Criminal Division

COMMONWEALTH OF PENNSYLVANIA,
vs.
JILL V. DeJOHN.

Nos. CC760-2893, CC760-3072, CC760-3020.

After hearing and careful consideration of defendant's "Application to Suppress Evidence and For Return of Property," as amended, (Application No. 2), the Court finds the following facts:

1. The items authorized by the search warrant to be sought for and seized, namely, any and all items "that can be compared to the Extortion Letter (sic)" sets forth a general and legally proper classification of seizable items.

2. The banking records, including the P.C.R. account records, which were seized pursuant to the authorized search were reasonably related to the purposes of the authorized search, and were properly seized as relevant evidence of possible criminal activity uncovered in a good faith search.

3. The search warrant affidavit sets forth information from several sources, including observations made by the af-

fiants and information received by them from individuals who heard and observed the matters concerning which information was given.

The Court concludes as a matter of law that probable cause existed for the issuance of the search warrants and that the items were lawfully seized.

Accordingly, the Application to Suppress, as amended, is denied.

JOSEPH H. RIDGE, *Judge.*

E. Excerpted Transcript of Petitioner's Trial on Attempted Theft by Extortion, March 28, 1977.

[3] *PROCEEDINGS*

March 28, 1977, Monday Morning Session

The Court: Are there any preliminary matters, motions that are to be disposed of?

Mr. Greenfield: Your Honor, as you know, this case is one which is integral with the homicide case which was tried before Your Honor and a Jury.

In that the proof in this case is substantially identical, if not in fact identical with the proof offered in the homicide case, and the cases were originally, as you know, consolidated. And it was our motion to sever the two.

That Your Honor may also recall that the applications to suppress evidence filed early in these proceedings generally were intended to apply to the homicide as well as to this. And I just want to be confirmed.

I think we have filed a formal [4] motion to that effect as well.

Given all that, and given the motions currently pending on the homicide case, which Your Honor has taken under advisement for disposition, and motion for new trial, which raise a series of legal questions related both to the events of that trial as well as to the applications to suppress—the evidence which would generally apply to all matters in both trials. That is that one and this one.

We would propose to now conclude this proceeding by proceeding in a non-jury fashion.

Appendix E.

The Court: Do you want to have the colloquy and a waiver of it on the record, and if you are ready, Mr. Fagan?

Mr. Fagan: Yes.

The Court: We have the two matters today.

Mr. Greenfield: The forgery and extortion, Your Honor.

* * *

[57] that typed Commonwealth's Exhibit No. 4.

I offer then into evidence Commonwealth's Exhibit 1, 2, 3 and 4.

Mr. Greenfield: The Defendant stipulates that if called, Sergeant King would have testified as related by Mr. Fagan.

The defense, however, does object to the introduction of the various Exhibits, and each of them for the reasons already of record in the other case, having to do with our application to suppress the evidence.

Mr. Fagan: The Commonwealth rests.

The Court: The Court will receive in evidence, over objection, the Exhibits referred to.

— — —

(Commonwealth Exhibits 1 through 4 were admitted into evidence.)

— — —

[58] Mr. Greenfield: If the Court please, the defense would demur, and on the assumption that Your Honor, at least take that under advisement, and we will proceed into the defense at this point.

The Court: Well, if you are going to go ahead, I think perhaps we better have a ruling on the demur.

Appendix E.

So if you want to make any argument, I will hear your argument, or if you prefer that the Court, based on what the Court has heard make a ruling to do so?

Mr. Greenfield: I would demur to the evidence, and perhaps Your Honor could rule on it without an argument.

The Court: Because you still have the right to move to arrest of judgment, or move for a directed verdict.

All right, the demur is overruled.

Mr. Greenfield: I would call Patricia Boyle.

F. Motion for New Trial and Motion in Arrest of Judgment.

IN THE COURT OF COMMON PLEAS
Of Allegheny County, Pennsylvania
Criminal Division

COMMONWEALTH OF PENNSYLVANIA

v.

JILL V. DeJOHN

NO. CC7603072A of 1976
(Attempted Theft By Extortion)

AND NOW comes the Defendant, Jill V. DeJohn, by her attorneys, Stanley W. Greenfield, Esquire, John W. Murtagh, Jr., Esquire, and Greenfield & Minsky, and moves for a new trial, or, in the alternative, an arrest of judgment for the following reasons:

1. The verdict was against the law.
2. The verdict was against the weight of the evidence.

The Court erred in denying Defendant's pretrial applications to suppress and the subsequent admission of exhibits and testimony at trial which were the subject of said applications, was therefore erroneous.

Appendix F.

4. The Commonwealth failed to prove that the Defendant took a "substantial step" toward the commission of the crime of attempted theft by extortion.

5. The Court erred in failing to find that the Defendant voluntarily and completely abandoned her criminal intent and therefore was not guilty of attempted theft by extortion.

Respectfully submitted,

STANLEY W. GREENFIELD,
Attorney for Defendant.

JOHN W. MURTAGH, JR.,
Attorney for Defendant.